

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ERIC L. JEFFRIES,)	CASE NO. C-1-02-351
	:	
Plaintiff,)	JUDGE BECKWITH
	:	Magistrate Judge Hogan
v.)	
	:	
CENTRE LIFE INSURANCE CO.,)	
	:	
Defendant.)	

**PLAINTIFF'S MOTION TO EXCLUDE THE TESTIMONY OF DR FREY
AND MOTION FOR PROTECTIVE ORDER**

The amended scheduling order in this case required the defendant to supply the plaintiff with copies of its experts reports by August 30, 2003. On that date, the defendant advised plaintiff that defendant intended to utilize Dr Kirk Frey as an expert and stated that:

"we have submitted Dr. Pretorius' information to Dr. Frey and expect to have a report back from him shortly." (*See, Exhibit A-1, attached*).

Notwithstanding the Court's August 30, 2003, deadline for the production of expert reports and defendant's representation on its production of Dr. Frey's report "shortly," two full months have passed and defendant has still refused to produce Dr. Frey's expert report.

For defendant's willful disregard of the scheduling order, the plaintiff requests that defendant be precluded from offering any testimony of Dr. Frey at any proceeding in this case.

The plaintiff further requests that the deposition of Dr. Pretorius, plaintiff's expert, be postponed until after defendant produces Dr. Frey's report or this Court enters the Order precluding Dr. Frey from testifying. A memorandum in support is attached.

Respectfully submitted,

OF COUNSEL

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
(513) 621-6464

/s Michael A. Roberts
Michael A. Roberts, Esq. (0047129)
GRAYDON HEAD & RITCHEY LLP
511 Walnut Street, Suite 1900
Cincinnati, Ohio 45202
(513) 629-2799
(513) 651-3836 (fax)
email:mroberts@graydon.com

MEMORANDUM IN SUPPORT

Once again, the defendant has blatantly disregarded an Order of this Court.

The amended scheduling order set August 30, 2003, as the deadline for defendant to provide plaintiff with copies of its experts' reports (plaintiff complied with its similar, earlier deadline of August 15, 2003). On August 29, 2003, the defendant identified Dr. Kirk Frey as an expert but did not provide plaintiff with a copy of his report. Rather, defendant represented that Dr. Frey's report would be forthcoming "shortly."

Two months have passed and defendant has still not provided plaintiff with a copy of Dr. Frey's expert report. For this reason, as a sanction, the plaintiff requests that defendant be precluded from offering any testimony of Dr. Frey at any proceeding in this case.

In addition, the plaintiff requests that the Court order that the deposition of plaintiff's expert, Dr. Pretorius, be postponed until an order is entered precluding Dr. Frey from testifying or defendant finally produces Dr. Frey's report.

Defendant has apparently decided that it is a better strategy for it to take plaintiff's expert's deposition before defendant produces its experts report. That, however, is not how the schedule of the case was set up. The expert reports were to be provided before the time for expert depositions. Six weeks remain before the deadline for the taking of experts depositions

and Dr. Pretorius deposition (noticed for October 31) can be postponed to a time after Dr. Frey's report is finally produced and prior to the discovery cutoff.

Plaintiff's counsel has attempted to obtain defendant's cooperation on this point but it was refused. (*See, Exhibit A-2*).

Respectfully submitted,

OF COUNSEL

GRAYDON, HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
(513) 621-6464

/s Michael A. Roberts
Michael A. Roberts (0047129)
GRAYDON, HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
(513) 629-2799
email: mroberts@graydon.com

CERTIFICATE OF SERVICE

The foregoing was delivered via facsimile and regular mail to William R. Ellis, Esq., Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202, this 29th day of October, 2003.

/s Michael A. Roberts